

State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

PROJECT AGREEMENT

HABITAT CONSERVATION FUND PROGRAM

APPLICANT County of Mono

PROJECT TITLE Conway Ranch

PROJECT NUMBER HD-26-001

PROJECT PERFORMANCE PERIOD IS Date of Appropriation to June 30, 2002

Under the terms and conditions of this agreement, the applicant agrees to complete the project as described in the project description, and the State of California, acting through its Director of Parks and Recreation pursuant to the Habitat Conservation Fund Program, agrees to fund the project up to the total state grant amount indicated.

PROJECT DESCRIPTION:

Acquisition of approximately 312 acres of the 1,031 acre Conway Ranch project.

Total State Grant not to exceed \$ 492,500

County of Mono

By Don Lyster
Applicant
Signature of Authorized Representative

Title Director, Energy Management Department

Date _____

By _____

Title _____

Date _____

The General Provisions attached are made a part of and incorporated into the Agreement.

APPROVED AS TO FORM:

Thomas L. M.
Mono County Counsel Office

Dated: 9-14-97

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION

By _____

Date _____

CERTIFICATION OF FUNDING

3026

AMOUNT OF ESTIMATE \$492,500		CONTRACT NUMBER C9725003		PROJECT NO. HD-26-001		FUND HABITAT CONSERVATION FUND	
INDEX 1091	OBJ. EXPEND 702	PCA 62358	PROJECT/WORK PHASE		VENDOR NO. 0000003026 00		
UNENCUMBERED BALANCE \$		ITEM 3790-101-0262 (1)		CHAPTER 282	STATUTES 97	FISCAL YEAR 1997/98	
ADJ. INCREASING ENCUMBRANCE \$		FUNCTION					
ADJ. DECREASING ENCUMBRANCE \$		LINE ITEM ALLOTMENT					
I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance.					T.B.A. No.	B.R. No.	
SIGNATURE OF ACCOUNTING OFFICER ▶					DATE		

**CALIFORNIA WILDLIFE PROTECTION ACT 1990
HABITAT CONSERVATION FUND PROGRAM**

**Project Agreement
Special Provisions**

Notwithstanding any other provision of this agreement, grant moneys shall be encumbered by the Applicant within three years of the date when the appropriation became effective. Said date of appropriation is July 1, 19

General Provisions

A. Definitions

1. The term "State" as used herein means the California State Department of Parks and Recreation.
2. The term "Act" as used herein means the California Wildlife Protection Act commencing with Section 2780 of the Fish and Game Code.
3. The term "Project" as used herein means the project which is described on page 1 of this agreement.
4. The term "Applicant" as used here means the party described as applicant on page 1 of this agreement.
5. The term "Application" as used herein means the individual application and its required attachments for grants pursuant to Section 2785(d) of the Fish and Game Code and submitted to the State pursuant to Section 2787(a) (3) of the Fish and Game Code.

B. Project Execution

1. Subject to the availability of grant moneys in the Act, the State hereby grants to the Applicant a sum of money (grant moneys not to exceed the amount stated on page 1 in consideration of and on condition that the sum be expended in carrying out the purposes as set forth in the Description of Project on page 1 and under the terms and conditions set forth in this agreement.

Applicant agrees to assume any obligation to furnish any additional funds that may be necessary to complete the project. Any modification or alteration in the project as set forth in the application on file with the State must be submitted to the State for approval.
2. Applicant agrees to complete the Project in accordance with the time of project performance set forth on page 1, and under the terms and conditions of this agreement.
3. Applicant shall comply as lead agency with the California Environmental Quality Act (Public Resources Code, Section 21000, et. seq.)
4. If the Project includes development, the development plans and specifications or force account schedule shall be reviewed and approved by the State.
5. Applicant agrees to secure completion of the development work in accordance with the approved development plans and specifications or force account schedule.
6. Applicant agrees to permit periodic site visits by the State to determine if development work is in accordance with the approved plans and specifications or force account schedule, including a final inspection upon Project completion.
7. Applicant agrees to submit all significant deviations from the Project to the State for prior approval.

8. If the Project includes acquisition of real property Applicant agrees to comply with Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code and any applicable federal, state, or local laws or ordinances. Documentation of such compliance will be made available for review upon request by the State.
9. Applicant agrees to furnish State preliminary title reports respecting such real property or such other evidence of title which is determined to be sufficient by State. Applicant agrees in negotiated purchases to correct prior to or at the close of escrow any defects of title which in the opinion of State might interfere with the operation of the Project. In condemnation actions such title defects must be eliminated by the final judgment.
10. Applicant agrees to provide for public access in accordance with the intent and provisions of the enabling legislation and/or program.

C. Project Costs

The Grant moneys to be provided Applicant under this agreement may be disbursed as follows:

1. If the Project includes acquisition of real property, the State may disburse to Applicant the grant moneys as follows, but not to exceed in any event the State grant amount set forth on page 1 of this agreement:
 - a. When acquisition is through negotiated purchase, State may disburse the amount of the State approved purchase price together with State approved costs of acquisition when an escrow is opened.
 - b. When acquisition is allowed pursuant to this Act through proceedings in eminent domain, State may disburse the amount of the total award as provided for in the final order of condemnation together with State approved costs of acquisition.
 - c. In the event Applicant abandons such eminent domain proceedings, Applicant agrees to bear all costs in connection therewith and that no grant moneys shall be disbursed for such costs.
2. If the Project includes development, after approval by State of Applicant's plans and specifications or force account schedule and after completion of the Project or any phase or unit thereof, State may disburse to Applicant upon receipt and approval by State of a statement of incurred costs from Applicant, the amount of such approved incurred costs shown on such statement, not to exceed the State grant amount set forth on page 1 of this agreement, or any remaining portion of such grant amount to the extent of such statement.

The statements to be submitted by Applicant shall set forth in detail the incurred or estimated cost of work performed or to be performed on development of the Project and whether performance will be by construction contract or by force account. Statements shall not be submitted more frequently than ninety day periods unless otherwise requested by State.

Modifications of the development plans and specifications and/or force account schedule must be approved by State prior to any deviation from the State approved plans and specifications and/or force account schedule unless previously authorized by the State.

D. Project Administration

1. Applicant agrees to promptly submit such reports as the State may request.
In any event Applicant shall provide State a report showing total final Project expenditures.
2. Applicant agrees that property and facilities acquired or developed pursuant to this agreement shall be available for inspection upon request by the State.
3. Applicant agrees to use any moneys advanced by the state under the terms of this agreement solely for the Project herein described.
4. If grant moneys are advanced, the Applicant agrees it should place such moneys in a separate interest bearing account, setting up and identifying such account prior to the advance, interest earned on grant moneys shall be used on the project or paid to the State. If grant moneys are advanced and not expended, the unused portion of the grant shall be returned to the state within 60 days of completion of the Project or end of the Project performance period, whichever is earlier.

E. Project Termination

1. Applicant may unilaterally rescind this agreement at any time prior to the commencement of the Project. After Project commencement this agreement may be rescinded, modified or amended by mutual agreement in writing.
2. Failure by the Applicant to comply with the terms of this agreement or any other agreement under the Act may be cause for suspension of all obligations of the State hereunder.

3. Failure of the Applicant to comply with the terms of this agreement shall not be cause for the suspension of all obligations of the State hereunder if in the judgment of the State such failure was due to no fault of the Applicant. In such case, any amount required to settle at minimum cost any irrevocable obligations properly incurred shall be eligible for reimbursement under this agreement.
4. Because the benefit to be derived by the State, from the full compliance by the Applicant with the terms of this agreement, is the preservation, protection and net increase in the quantity and quality of parks, public recreation facilities and/or historical resources available to the people of the State of California and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the State by way of grant moneys under the provisions of this agreement, the Applicant agrees that payment by the Applicant to the State of an amount equal to the amount of the grant moneys disbursed under this agreement by the State would be inadequate compensation to the State for any breach by the Applicant of this agreement. The applicant further agrees therefore, that the appropriate remedy in the event of a breach by the Applicant of this agreement shall be the specific performance of this agreement, unless otherwise agreed to by the State.
5. Applicant and State agree that if the Project includes development final payment may not be made until the Project conforms substantially with this agreement and is a usable facility.

F. Hold Harmless

1. Applicant agrees to waive all claims and recourse against the State including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to this agreement except claims arising from the concurrent or sole negligence of State, its officer, agents, and employees.
2. Applicant agrees to indemnify, hold harmless and defend State, its officers, agents and employees against any and all claims demands, damages, costs, expenses or liability costs arising out of the acquisition, development, construction, operation or maintenance of the property described as the Project which claims, demands or causes of action arise under Government Code Section 895.2 or otherwise except for liability arising out of the concurrent or sole negligence of State, its officers, agents, or employees.
3. Applicant agrees that in the event State is named as codefendant under the provisions of Government Code Section 895 et seq., the Applicant shall notify State of such fact and shall represent State in the legal action unless State undertakes to represent itself as codefendant in such legal action in which event State shall bear its own litigation costs, expenses, and attorney's fees.
4. Applicant and state agrees that in the event of judgment entered against the State and Applicant because of the concurrent negligence of the State and Applicant, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.
5. Applicant agrees to indemnify, hold harmless and defend the State, its officers, agents and employees against any and all claims, demands, costs, expenses or liability costs arising out of legal actions pursuant to items to which the Applicant has certified. Applicant acknowledges that it is solely responsible for compliance with items to which it has certified.

G. Financial Records

1. Applicant agrees to maintain satisfactory financial accounts, documents and records for the Project and to make them available to the State for auditing at reasonable times. Applicant also agrees to retain such financial accounts, documents and records for three years following project termination or completion.

Applicant and State agree that during regular office hours each of the parties hereto and their duly authorized representatives shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this agreement or matters related thereto. Applicant agrees to maintain and make available for inspection by the State accurate records of all of its costs, disbursements and receipts with respect to its activities under this agreement.

2. Applicant agrees to use any generally accepted accounting system.

H. Use of Project Area

1. Applicant agrees that the property acquired or developed with grant moneys under this agreement shall be used by the Applicant only for the purposes of the California Wildlife Protection Act of 1990 and no other use, sale, or other disposition of the area shall be permitted except by specific act of the Legislature.
2. The Applicant agrees to maintain and operate in perpetuity the property acquired, developed, restored or enhanced with these funds.

I. Nondiscrimination

1. The Applicant shall not discriminate against any person on the basis of sex, race, color, national origin, age, religion, ancestry, or physical handicap in the use of any property or facility acquired or developed pursuant to this agreement.
2. The Applicant shall not discriminate against any person on the basis of residence except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence and pursuant to law.

3. All facilities shall be open to members of the public generally, except as noted under the special provisions of this project agreement or under provisions of the enabling legislation and/or program.

J. Application Incorporation

The Application and any subsequent change or addition approved by the State is hereby incorporated in this agreement as though set forth in full in this agreement.

K. Severability

If any provision of this agreement or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of the agreement which can be given effect without the invalid provision or application, and to this end the provisions of this agreement are severable.